M

Scott. II-37—40,000—37-10-42.

HOME (1947) Department.

(9)

MS. SERIES.

G.O No. No 3644

Dated 18th September 1947.

[Despatch Abstract.]

Ill - Non-Official - The Muslim Personal Law Shariat Application (Madras) Amendment Bill - Motion for introduction. - Not renewed - Papers recorded.

SECRETARIAT OF THE MADRAS LEGISLATURE

Note No.923/47-1, M.L., dated 7th February, 1947.

Sub: BILLS - Non-official - The Muslim Personal Law (Shariat) Application (Madras Amendment) Bill, 1947 - By Mr. K.M. Seethi, M.L.A. -Notice of Motion for introduction.

Ref: Letter from Mr.K.M. Seethi, M.L.A., dated 31st January, 1947.

In his letter cited, Mr. K.M. Seethi, M.L.A., has given notice of his intention to move for leave to introduce a Bill to amend the Muslim Personal Law (Shariat) Application Act, 1937 (Central Act XXVI of 1937).

2. Rule 70 of the Assembly Rules prescribes a period of 15 days' notice for Bills. This notice is, therefore, in time only for a meeting of the Assembly which may be held for the transaction of non-official business after the 17th February 1947 unless the Hon'ble the Speaker waives the prescribed notice under rule 112 ibid.

3. Copies of the M.L.A's letter and the Bill together with the statement of objects and Reasons and a copy of this note may be sent to the Legal, Home and Education and Public Health Departments, and to the Hon'ble the Leader of the House, the Hon'ble the Minister for Law, the Hon'ble the Minister for Religious Endowments and the Secretary to His Excellency the Governor.

4. The Bill seeks to amend a Central Act (Central Act XXVI of 1937). The subject of matter of the Bill would appear to fall under entries 6,7 and 9 of Part I of List III and entry 21 of List II of the VII Schedule to the Government of India' Act, 1935. The Bill seems to be intra vires the powers of the Provincial Legislature. The provisions of the draft Bill do not appear to require the previous sanction, in his discretion, of His Excellency the Governor-General or His Excellency the Governor nor the recommendation of His Excellency the Governor, under the Government of India Act, 1935. The Legal Department may be requested to advise whether the position set out above is correct.

Sd. D.K.V. RAGHAVA VARMA,
Secretary,
Madras Legislature.

I am not waiving notice.

J.S.
Hon'bleSpeaker.

To Legal Department
" Home
" Education and Public Health Department.
" Hon'ble the Leader of the House.
" " the Minister for Law.
" " the Minister for Religious Endowments.
" the Secretary to His Excellency the Governor.

/TRUE COPY/

RS/

Copy of letter No.Nil, dated 31st January, 1947, from Sri K.M. Seethi, B.A., B.L., M.L.A., to the Secretary, Madras Legislature Assembly, Madras.

UNDER rule 70 of the Madras Legislative Assembly rules, I hereby give you notice of my intention to move for leave to introduce my bill entitled A Bill to amend the Muslim Personal Law (Shariat) application Act. Act XXVI of 1937 in the next session of the Assembly. I am enclosing a copy of the Bill with a statement of objects and reasons.

/TRUE COPY/

HOME (N) DEPARTMENT

Please see the U.O. noc of the Legislature Secretariat on page 1 ante. G.O.Ms.No.447, Home, dated 4-2-1942, abstract of which is noted in the margin* has been called for from M.R.O., Chittoor, together with the connected papers. This may be sent to Legal Department in the meanwhile, with reference to X on page 1 ante.

*The Muslim personal Law(Shariat) Application Amendment Bill by Kazi Muhammad Ahmad Kazmi, M.L.A. opinion of this Govt. forwarded to Govt. of India.

Sd. x x x
11-2-47.

LEGAL DEPARTMENT.

The Bill deals with the following topics of Muslim Law:--

1. Intestate succession.
2. Special property of females, including personal property inherited or obtained under contract or gift or any other provision of personal law.
3. Marriage, and dissolution of marriage.
4. Maintenance.
5. Dower.
6. Guardianship.
7. Gifts.
8. Wills and legacies.
9. Trusts and trust properties.
10. Wakfs other than charitable and religious endowments.

Items 1 and 8 fall under entry 7 of the Concurrent Legislative List (Wills, intestacy and succession, save as regards agricultural land) and Entry 21 of the Provincial Legislative List (transfer alienation and devolution of agricultural) and

Item 2 falls partly under Entry 7 of the Concurrent Legislative List and Entry 21 of the Provincial Legislative List mentioned above and partly under Entry 8 of the Concurrent Legislative List, viz., "Transfer of property other than agricultural land".

Items 3, 5 and 6 fall under Entry 6 of the Concurrent Legislative List viz. "Marriage and divorce; infants and minors".

Item 4 does not fall under any of the entries in the 7th Schedule to the Government of India Act. The obligations to maintain grandchildren, and parents and grand-parents etc. laid by Muslim law on persons subject to it (see paragraphs 269 to 271 of Mulla's Muhammaden Law, 12th Edition) is outside the scope of any of the Legislative Lists and cannot therefore form a subject of Legislation by the Provincial Legislature.

Item 7 This falls under Entry 8 of the Concurrent Legislative List and Entry 21 of the Provincial Legislative List, viz., "Transfer of property other than agricultural land" and "transfer, alienation and devolution of agricultural land".

Item 9: This falls under the Entry 9 of the Concurrent Legislature List, viz. "trusts and Trustees

Item 10. By "Wakfs other than charitable and religious endowments" is apparently meant wakfs for the maintenance and support wholly or partially of the wakif's family, children or descendants, et

b

This may possibly be brought within the scope of entries 8 and 9 of the Concurrent Legislative List and Entry 21 of the Provincial Legilslative List mentioned above.

2. The above analysis shows that except as regards one item viz., item 4 (Maintenance), the Bill will be intra vires the Provincial Legislature. So far as item 4 is concerned, the Bill cannot be considered by the Provincial Legislature unless H.E. the Governor-General empowers it to do so by a public notification issued in pursuance of Section 104 of the Government of India Act.

3. The previous sanction of the Governor is not required for this Bill. Nor does it require the recommendation of H.E. the Governor with reference to Section 82 of the Government of India Act.

Sd. x x x x
24-2-49.

HOME (N) DEPARTMENT

Please see the previous note of this Department on page 5 and the note of Legal Department on pages 5-6 ante. The Muslim Personal Law (Shariat) Application Act, 1937 is a Central Legislation. In 1936, a Bill to make provision for the application of the Muslim Personal Law to Muslims in British India xx was introduced in the Central Legislative Assembly as a Private Bill, by Mr.H.M. Abdullah, M.LLA. The Government of India forwarded copies of the Bill with statement of objects and reasons to this Government, and asked for an expression of its opinion on the provisions of the Bill, together with the opinion of the Hon'ble the Judges of the High Court, and of such select officers and other persons as this Government may think fit to consult on the subject. This Government accordingly consulted the High Court, the Advocate General, the Govt. Pleader, Madras and 15 others including non-official members of the Madras Legislative xxxx Council. The minutes of the Hon'ble the Judges of the High Court and the opinions received from others were forwarded to the Government of India - Please see the letters on pages 27-28 and 45-47 of G.O.NO. 136, Legal, dated 29-8-1936. An expression of this Government's opinion on the provisions of the Bill ~~will~~ be found in para 2 of the letter on pages 45-47 of the G.O. It will be seen that the provisions in the Act (which was finally enacted) regarding exclusion of agricultural lands, wills and Legacies from its operation did not find a place in the Bill referred to this Government for opinion. The circumstances under which these modifications were made in the Act, are referred to in the Statement of Objects and Reasons of the non-official Bill at (U). A statement showing side by side the section 283 of the Act in question as they stand and as they will be if the Act is amended by the non-official Bill proposed, is put up at (M)

2. The Legal Department have noted that the Bill will be intra vires the Provincial Legislature except for item 4 on page 5 ante and that unless H.E. the Governor-General empowers it to do so by a public notification issued under Section 104 of the Government of India Act, the Bill cannot be considered by the Provincial Legislature.

3. With reference to Secretariat instruction No(2)

P.T.O.

no other department seems to be concerned with this Bill. A copy of the Legislature Secretariat's U.O. note marked for Education and Public Health has been passed on to this Department U.O. because that department is not concerned. As there is no provision in the Bill which affects or is likely to affect the Finances of the Province, Finance Department need not see with reference to Secretariat Instruction 40(2).

4. The case may be circulated to all Honourable Ministers, Honourable Prime Minister and His Excellency for orders as to the attitude that will be taken by Government when the Bill ismoved in the Assembly. If the Bill is not to be opposed, His Excellency the Governor-General will have to be addressed with reference to para 2 above.

Sd.x x x x
28-2-1949.

MINUTES OF THE HON'BLE MINISTERS:

I do not think it will be right for us to oppose this bill as it concerns Muslims entirely and their opinions should prevail. But with regard to item No.4 it is within the competence of the Provincial Legislature and if the Hon. member will introduce his Bill leaving out reference to item 4, we need not oppose the Bill. The Hon. member may be written to this effect and we may agree to modify the Bill in view of the question of Competence. But if he wants that provision, I would suggest for the consideration of my colleagues that we may apply for the sanction of His Excellency the Governor-General for the inclusion of this item.

Sd. x x x
25-8-47

H.M. (Law)
" (Fin)
" (M T&E)
" (PI)
" (Edn.)
" (Agr)
" (P.W.)
" (Rev)
" (L.A.)
" (HRE)
" (I&L)
" (PH&M)
" (HPM)
" (H.E.)

I agree with the note of H.M. (Law) above.
Sd. x x x
14-4-1947.

In South India there are many Labbais who follow the Hindu Law. If this is allowed to become law, any Muslim can change with the expression of opinion that he would like to adopt this law, and I do not know how many of these labbais and others who are at present governed by Hindu Law will be prepared for this change.

I think we should move for circulation and have to elicit public opinion before we make up our mind in the matter.

T.S.A.
17-4-47.

B.G.R.
19-4-

I agree with Hon'ble Minister (Home)
M.B.
19-4-47.

Yes. I also agree.
Sd. x x x
19-4-1947

C.P.R.
22-4-1947.

yes Sd x x x

Yes.

Sd. x x x x
20-4-47.

So do I agree.

sds x x x
22-4-47

Private Secretary to His Excellency: H.M.(Law) may please see H.M.(Education's) minue before H.E. sees. The motion has lapsed with the prorogation of the Assembly but the member will presumably renew show his notice of motion for its introduction.

Sd. x x x
26-4-47.

Circulated to H.M.(Home) for perusal of minute of H.M.(Education)

x x x x
20-4-47

H.M.(Home)

I stick to what I have said

sd. x x x
3-5-47.

May now be circulated again to H.E.

Sd. x x x
8-5-1947.

H.P.M.

Perhaps you would discuss with H.M.(Education)? All other ministers desire not to oppose this Bill, but all have not seen H.M.(Education)'s latest minute.

Sd. x x x
10-5-1947.

Circulated to H.P.M.

Sd. x x x
12-5-1947.

The Bill may be circulated for eliciting public opinion.

O.P.R.
15-5-47

Please see the previous note of this department on pages 7-8 above. The case was circulated to all Honourable Ministers, H.P.M. and H.E. for orders as to the attitude that will be taken by Government when the Bill is moved in the Assembly. Please see the minutes of H.Ms. and H.E. on pages 8-9 above, and the further minute of H.P.M. above who has agreed with H.M.(Edn) that the Bill should be circulated for eliciting public opinion. The case may be circulated to all H.Ms. and except H.P.M. and H.M.(Edn) and H.E. for perusal of H.P.M's minute.

Sds x x x
22-5-47.

H.M.(Home)
H.M.(R.D)

	H?M.(Home)	As H.P?M. has suggested, the Bill may be cirdulated fe
	H.M.(R.D)	eliciting public opinion.
	H.M.(P.H.)	Sd. x x x, 31-5- x x x x
Sd. x x	H.M.(L.R.)	I agree with H.M.Home. 23-5-47.
5-6-47.	H.M.(Agr)	Sd. x x x, 9-6-1947
	H.M.(L.A.)	Sd. x x x, 11/6
	H.M.(Ind.)	Sd. x x x, 14-6-
	H.M.(Pro.)	Sd. x x x, 12/6
	H.M.(Fin.)	Sd. x x x, 13/6
	H.M.(P.W.)	I agree. Sd. x x x, 17/6
	H.M.(Food)	Sd. x x x
	H.E.	

May be circulated for eliciting public opinion.

Sd. x x x x
22-6-1947.

SECRETARIAT OF THE MADRAS LEGISLATURE

U.O.Note No.923/47-4 M.L., dated the 14th March 1947.

Sub: Bills - Non-official - The Muslim Personal Law (Shariat) Application (Madras Amendment) Bill, 1947 - By Mr.K.M. Seethi Sahib, M.L.A. - Notice of motion for introduction.

Ref: U.O.Note No.923/47-1-M.L., dated 7-2-1947.

The Legal Department have held that the above Bill does not require either the previous sanction of the Governor or his recommendation with reference to section 82 of the Government of India Act, 1935. But they have pointed out that so far as item 4 (Maintanance) is concerned, the Bill cannot be considered by the Provincial Legislature unless His Excellency the Governor-General empowers it to do so by a public notification issued in pursuance of section 104 of the Government of India Act, 1935.

2. Mr. K.M. Seethi Sahib who was consulted in the matter wishes to retain the provisions relating to 'Maintenance) and requests that His Excellency the Governor-General may be addressed to empower the Provincial Legislature under Section 104 of the Government of India Act, 1935 to enact the law.

3. A copy of the Bill with the statement of objects and reasons was sent to the Home Department with u.o note cited. The Home Department as the administrative department concerned may be requested to obtain the orders of the Governor-General with reference to 'A' above and communicate the same to this Department.

Sd.D.K.V.RAGHAVA VARMA,
Secretary,
Madras Legislature.

To
Home Department.
Copy to the Secretary to His Excellency the Governor.

/TRUE COPY/

Copy to letter dated the 12th March 1947 from Mr.K.M. Seethi Sahib, M.L.A. to the Secretary, Madras Legislature, Madras.

Ref: Your D.O.No.923/47-3, M.L., dated 7-3-1947.

In reply to your letter under the above reference, I am to state that I wish to retain the provisions relating to maintenance and to request you to obtain the permission of H.E. the Governor-General under Section 104 of the Government Of India Act, 1935.

HOME (N) DEPARTMENT.

Please see the U.O. note of the Assembly Secretariat on page 1 ante. The main file on the bill was sent in full circulation on 25-2-1947 requesting orders as to the attitude that will be taken up by Government towards their introduction of the bill (i.e.) whether to oppose the bill or not. Submitted this may ~~be~~ lie over till the main file is received back from circulation, when the Government of India may be addressed as suggested by the Legislature Secretariat in para 3 on page 1 ante.

Sd. x x x x

Please see the orders in circulationon page 10 above. It has been agreed that the Bill should be circulated for eliciting public opinion. The Government may move for circulation for eliciting public opinion when the Bill is introduced in the Assembly. The motion of the Hon'ble member, for the introduction of the Bill has lapsed on account of the prorogation of the Assembly. Further action may be taken when th e Hon'ble Member renews his notice of motion for introduction of the Bill. It has been ascertained it has not been renewed so far.

2. Please see the U.O. note of the Assembly Secretaria on page 11 above and this Department's note at page 12 ante. The motion has lapsed with the prorogation of the Assembly but it is expected that the member will renew his notice of motion for its introduction - vide P.S.G.'s note on page 9 above. It is therefore for consideration whether with reference to para 2 on page 11 ante, the Government of India may be addressed now in regard to the issue of the notifications under Section 104 of the Government of India Act. Subject to orders a draft letter to the Government of India is submitted for consideration. Legal may see before issue.

Sd. x x x
3-7-1947.

LEGAL DEPARTMENT

Seen in Legal.

Sd. x x x x
4-7-47.

HOME DEPARTMENT

Draft letter below may be now issue.

Sd. x x x
8-7-1947.

(Issued as Letter 8893 N/47-2, dated 8-7-47)

Please see the para 2 of the note of the Legal Department on page 9 ante, the letter to the Government of India on page 1 and their reply on page 3 c.f. In the circumstances stated, no further action is called for. The motion for introduction of the Bill has not been renewed so far by the Honourable Member. A copy of the Government of India's reply may be communicated to the Legislature Secretariat for information with reference to para 3 of their U.O. note on page 11 above, and the case then closed after perusal by Legal. Draft U.O. note below is for approval. After issue, the case may be sent to Legal.

Sd. x x x
1-9-1947.

LEGAL DEPARTMENT

The view expressed in the Government of India's letter at page 3 c.f. is opposed to that taken by the Hindu Law Committee of which Sir B.N. Rau was Chairman. The Committee considered the subject of "maintenance" as being within the purview of the Legislative Lists only in so far as it arose from the subject of intestate or testamentary succession, marriage and minority and guardianship. The Committee consequently

regarded itself as precluded from including in the Hindu Code framed by it, the provision in the Hindu present law which lays an obligation on a son to maintain his aged parents. Having regard to the high authority taking this view, the Government of India may be addressed again on the subject.

Sd. x x x
5-9-47.

As the new Constitution is likely to come into effect within a few months, I do not think it would serve any useful purpose to take up the matter again with the Government of India. For the present, we may act on the supposition that their new view is correct. They say the Provincial Legislature is competent and we need not insist that it is not competent.

Sd. x x x x
5-9-1947.

HOME DEPARTMENT.

Please see this Department's note at the note of the Legal Department above. The case may now be closed, and recorded for future reference.

G.O.Ms.No.3544, d/
15-9-47.

Abs: Bill - Non-official The Muslim Personal Law (Shariat) Application (Madras) amending Bill - Motion for introduction - not renewed - Papers recorded.

Sd. x x x x
Secretary to Government.

/TRUE COPY/

R. Thiagarajan 9.2.54

OFFICE ASSISTANT,
Madras Record Office.

RS/18/11/

27/11/53 2nd 2/11/54